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**Board of Contract Appeals**  
General Services Administration  
Washington, D.C. 20405

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August 15, 2001

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GSBCA 15523-TRAV

In the Matter of BRIAN E. HAVITZ

Brian E. Havitz, Monroe, OH, Claimant.

Diana E. Settlemeyer, Chief, Claims and Correction of Records, Defense Finance and Accounting Service, Denver, CO, appearing for Department of Defense.

**HYATT**, Board Judge.

Claimant, Brian E. Havitz, is a civilian employee of the National Guard Service of the Departments of the Army and the Air Force. His permanent duty station at the time of travel was the Air National Guard's 123<sup>rd</sup> Air Control Squadron in Blue Ash, Ohio. In August 2000, he performed a temporary duty (TDY) assignment at Hill Air Force Base in Utah. The issue presented to the Board for review concerns Mr. Havitz's return trip to Ohio, which was routed from Salt Lake City, Utah, to Dayton, Ohio, through Chicago, Illinois. Mr. Havitz landed in Chicago as planned, but was unable to take the connecting flight to Dayton because it had been overbooked. Instead of taking a later flight that day, or staying overnight in Chicago and flying to Dayton the next day, claimant rented a car and drove from Chicago to his house in Monroe, Ohio.

Upon his return to Ohio, Mr. Havitz requested reimbursement for the cost of the rental car. When the unused portion of claimant's ticket was turned in, the commercial transportation office (CTO) advised that it would not be possible to obtain a refund for the partial portion of the return flight. Additionally, although Mr. Havitz was authorized to rent a car while in Utah, his travel orders did not authorize rental of a car to drive from Chicago to Ohio. The command would like to approve the expenses; the Defense Finance and Accounting Service (DFAS) regards the claim as doubtful, expressing the view that claimant drove from Chicago to Ohio for his personal convenience. DFAS takes the position that the claim must be denied.

Discussion

Under the Federal Travel Regulation (FTR), Government employees who travel on official business are expected to use common carriers for transportation unless the authorizing agency determines that an alternative means of travel is more advantageous to the Government. 41 CFR 301-10.5(a) (2000). When the employee does not travel by the method of transportation selected by the agency, the employee must bear any additional expenses. *Id.*, 301-10.6. The Joint Travel Regulations (JTR), which apply to civilian employees of the Department of Defense and supplement the FTR, contain a similar provision. JTR C2001-A.3.d.

The record provided to us does not establish whether Mr. Havitz voluntarily relinquished his seat on the overbooked flight or whether he was denied boarding rights by the airline. Although the FTR permits employees to voluntarily vacate a seat on a scheduled airline flight to the extent it will not interfere with official duties, the employee is nonetheless responsible for any additional costs incurred. FTR 301-10.117. When an employee is "bumped" involuntarily, the employee is generally entitled to reimbursement for additional subsistence costs that may be incurred, but is required to ensure that any financial remuneration provided by the airline is made payable to the "Treasurer of the United States." FTR 301-10.116; Omar J. Norris, B-224590 (Nov. 10, 1986). The rationale underlying this regulation is that since the Government has contracted with the airline for the reserved seat and may incur additional travel expenses on behalf of the employee denied the reserved seat, it is entitled to the compensation as a form of "liquidated damages." See John B. Currier, 59 Comp. Gen. 95 (1979); Chester Sipkin, B-148879 (Aug. 28, 1970). The proper disposition of this claim depends, therefore, on whether the relinquishment of the reserved seat was voluntary or involuntary.

To the extent Mr. Havitz volunteered to give up his reserved seat on the scheduled flight, he is fully responsible for the excess costs of travel he incurred by renting a car to perform the final leg of his return trip. In general, Government employees who volunteer to be bumped from an overbooked flight are better served to await a later flight, if possible, rather than arrange alternative transportation. In any event, if claimant voluntarily agreed to give up his seat, while he cannot recoup the cost of the rental car, he is permitted to retain any compensation that the airline afforded him for agreeing to give up his seat. JTR C2201-B; Charles E. Armer, 59 Comp. Gen. 203 (1980).

If Mr. Havitz was involuntarily denied a seat on the plane, the airline was required to book him on another flight to Dayton as soon as possible and, depending on the length of the delay attributable to the need to reschedule, may also have been required to furnish him with compensation. If this would have required an overnight stay, Mr. Havitz may have been entitled to subsistence expenses for lodging and meals and incidental expenses, to the extent the airline would not have absorbed these costs. At the same time, if the airline compensated Mr. Havitz for the loss of his reserved seat, he would be required to turn over that compensation to the Government. If this is the situation, and Mr. Havitz chose to rent a car and return home rather than stay overnight in the Chicago area, he may be compensated for the expense he incurred to the extent it does not exceed the cost the Government would have incurred for lodging and per diem as a result of the delayed travel. He should, however, also remit any compensation received from the airline to the Government.

This matter is returned to the agency for disposition in accordance with the above.

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CATHERINE B. HYATT  
Board Judge